THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAM

DATED 28-02-2007

WRIT PETITION No.7772 of 2004

Between:

The Divisional Commercial Manager,
South Central Railway, Vijayawada Division,
Vijayawada and three others.

.. Petitioners

And

Altaf Pasha, S/o Shaik Meera Sahed Respondent.

ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

The petitioners herein-the Railways/the Management filed this Writ Petition, *inter alia,* seeking a writ of Certiorari assailing the order dated 04.03.2004 in O.A.No.1270 of 2003 on the file of the Central Administrative Tribunal, Hyderabad (for brevity 'the Tribunal), allowing the application filed by the respondent-employee herein assailing the orders of his removal from service, with variation in the later proceedings and as confirmed by the authorities in hierarchy.

Heard Sri A. Krishnam Raju, learned Standing Counsel appearing for the petitioners and Sri G. Sanyasi Rao, learned counsel appearing for the respondent-employee.

The chequered events leading to these proceedings are that the respondent herein was initially appointed on 10.10.1996 in Group-D service as Goods Shed Hamali at Vijayawada Railway Division on compassionate grounds since his father, who was working with the Railways as Guard, died in harness on 22.04.1986 after rendering 20 years of service. The respondent had a continuous service till 19.11.2000 since inception without any demur. Later, a charge memo

dated 05.06.1999 was issued by the first petitioner herein alleging that the respondent was unauthorized absent for 73 days in different spells during the period from 1998-1999. After holding an enquiry, it was held that the said charge is proved, which ultimately leads to imposition of punishment of removal from service as per the order dated 17.11.2000. The appeal filed against the said order by the respondent herein was dismissed by the appellate Authority i.e., the second petitioner. However, on further Revision at the instance of the respondent herein, the third petitioner as per the orders dated 17.09.2002 modified the orders only to the extent of punishment from converting the removal to that of compulsory retirement. Later, again the respondent had submitted a representation to reduce the said punishment. However, the fourth petitioner as per the order dated 02.06.2003 refused the same on the ground that no further Revision is allowed under the Rules. Challenging these proceedings, the respondent filed an application before the Tribunal on various grounds. The petitioners contested the said application denying the correctness of the submissions made or the pleas as raised and further stating that having regard to the nature of acquisition and the findings as arrived at, the order of punishment as imposed is perfectly valid and neither the finding on the charge nor the punishment warrants any interference. It was also stated that though a plea was raised by the

respondent that due to illness, he could not attend but no medical certificate was filed. Therefore, there are no merits. After hearing both the sides, the Tribunal allowed the said application in part setting aside the said modified orders of imposing compulsory retirement and remanded the matter for fresh consideration to impose appropriate punishment by the Disciplinary Authorities. Hence, the Writ Petition.

The learned Standing Counsel appearing for the petitioners sought to contend that having regard to the nature of charge and on the face of it, it would not entail any employee for any indulgence and there being no proper explanation forthcoming, the authorities have rightly held against him and imposed punishment and therefore, there is no necessity to vary the punishment. Even otherwise, every un-authorized absence does not call for any reconsideration and therefore, the order of remand by the Tribunal is wholly unsustainable.

The learned counsel appearing for the respondent submits that the very allegations of unauthorized absence, is neither a serious one nor is it a continuous absence but it runs in different spells and especially where the employee has contended that it is due to his ill-health, the same could not have been put against him. Further, it is also stated that in spite of filing the medical certificate dtd.15.02.1999 before the Revisional Authority, the same was neither considered nor

any reasons were assigned to reject the same. Therefore, there is ample justification for his absence and the punishment as imposed is quite onerous and excess.

On a consideration of the submissions made on both the sides and on perusal of the material available on record, it is seen that the point that arises for consideration is as to whether on the facts and circumstances, the punishment as imposed and subsequently modified on the basis of the charge and the findings thereon is justified or whether it requires any reconsideration as directed by the Tribunal ?

At the out set, there is no dispute in regard to the aforesaid events which led the petitioners herein to remove the respondent-employee from service on the ground of unauthorized absence. The period of absence is for 73 days during the year from 1998-1999 and that too at different spells. After issuance of a charge sheet as aforesaid and holding enquiry, the Enquiry Officer found against the respondent on the said charge and ultimately all the authorities in the appeal and the Revision have concurred and conferred with the said findings. It is only the quantum of punishment, which was varied with by the Revisional Authority from converting the punishment of removal to that of compulsory retirement. It is these proceedings, which were challenged by the respondent, and the same were allowed and the matter was remanded to the Disciplinary Authority for fresh

consideration as to the quantum of punishment. Even though the respondent herein has been assailing the entire disciplinary proceedings on all the aspects at different levels till the filing of the application before the Tribunal, however, it is to be conspicuously noticed that no writ has been filed by the respondent-employee against the said orders of the Tribunal remanding the matter for fresh consideration only to the extent of quantum of punishment though the finding on the charge was not interfered with. Therefore, it is not necessary for this Court to go into the correctness of the charge or the allegations made therein in regard to the unauthorized absence. No-doubt, it has been pointed out that the respondent has filed a medical certificate to show his illness during the relevant period, which was issued on 15.02.1999 by one

Dr. A. Suryanarayana of Swati Clinic, Gavaravaram, which says that the respondent-employee has been under his treatment for a long duration especially from 06.02.1998 to 10.02.1999 and he was advised to continue the treatment and medical checkups weekly once. Even though, it has been stated by the respondent that this was not initially produced during the course of enquiry or in the appeal but only in the Revision but the same does not form part of any consideration nor it is referred to in the said proceedings. Be that as it may and

especially where there is no challenge by the respondent-employee as against the said findings, we would refrain from going into these aspects touching upon the main allegations or the findings as given thereof. Suffice it to say that having regard to the fact that the absence is not a continuous and long but is under different spells, the respondent-employee comes forward with the medical certificate showing illness which necessarily has to be born in mind before one takes a decision on the aspect of quantum of punishment.

The learned Standing Counsel appearing for the petitioners strenuously contends that any unauthorized absence be it for a day or two, is not pardonable nor can it be justified with any reason especially when no valid reason is forthcoming and having gone against, there is no need to vary with the punishment already imposed which is perfectly justified in these circumstances. Across the Bar, the learned Standing Counsel appearing for the petitioners sought to place reliance in ***State of Rajasthan Vs. Mohd. Ayub Naz***[1] where considering the absenteeism and proportionality of punishment imposed, it was found that the factum of absence of three years was an admitted fact and therefore, reducing the punishment from dismissal to that of compulsory retirement with all retiral benefits is not sustainable and further held that the order of removal of service is only

proportionate punishment to be awarded to the employee, who was willfully absent from three years without any intimation to the Government. Further in **North-Eastern Karnataka RT Corpn. Vs. Ashappa**[2] it is a case of misconduct due to absence for a long time i.e., three years and five days, wherein it was held that it is not a minor misconduct and could not be treated leniently and therefore, punishment of dismissal is the valid one. No doubt, as laid down in the aforementioned two decisions, the absenteeism cannot have any lenient approach nor the employee can be let off with any minor punishment. However, in these two decisions, which have been cited across the Bar, on behalf of the petitioners, the absenteeism was for a period of about 3 years and more and a continuous one and also the circumstances showing no positive response from the concerned employees therein whereas in the present case, the period of absenteeism is only 73 days that too in a different spells spread over during the period 1998-1999. Therefore, the facts on the face of it would not in any way run on the same lines as that of those two decisions so as to draw any comparative lines.

The learned counsel appearing on behalf of the respondent sought to place reliance in **Bhagwan Lal Arya Vs. Commissioner of Police, Delhi**[3] where a case of misconduct on the charge of

unauthorized absence from duty on account of the medical grounds, it was held that in the said circumstances especially where leave was sanctioned, the absence of duty on medical grounds cannot be termed as a grave misconduct and therefore, the punishment of removal from service is disproportionate and the same was quashed. In another decision relied on by the respondent in **U.P. State Road Transport Corpn. Vs. Mahesh Kumar Mishra**[4], it was not a case of unauthorized absence but only in regard to the principles as to the scope of this Court under Article 226 of the Constitution of India in regard to the punishment imposed on a delinquent employee, it was held that it is not, that the High Court can, in no circumstances, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings, not only the Supreme Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee if, that penalty, shocks the conscience of the Court. As regards the principles laid down in the later decision, there is no dispute in regard to the powers of this Court to interfere with the quantum of punishment imposed, if the circumstances warrant or any such exigency arises. However, as already observed above, in the absence of any challenge by way of a separate Writ Petition by the respondent-employee, it would not be proper nor competent for us to

go into the correctness of the findings on the main charge and more so when he himself has come out with the medical certificate which was sought to be ushered in as evidence in support at the stage of Revision.

In view of the totality of the circumstances, we are of the view that the Tribunal has rightly sought to give a fresh opportunity on a fresh consideration in regard to the quantum of punishment by taking into the circumstances the period or periods of absence *vis-à-vis* the reason put forth by the employee and also any material submitted by him in support thereof. Normally the Courts are very slow in interfering with the orders of remand unless and until any serious error or approach is made out. In this case, the petitioners have not made out any valid ground to warrant interference with the order of remand. It is needless to mention that the Disciplinary Authority would certainly weigh with all these surrounding circumstances and the material in support before it comes to any conclusion as to the quantum of punishment in proportionate to the gravity or the seriousness of the charge. Therefore, we do not find any merits in the above Writ Petition and the Writ Petition fails.

The Writ Petition is accordingly dismissed. No costs.

B. PRAKASH RAO, J

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RAMESH RANGANATHAN, J

28-02.2007.
Chvn.

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[1] 2006 SCC (L &S) 175

[2] (2006) 5 SCC 137

[3] ATJ 2004(3) SC 555

[4] AIR 2000 Supreme Court 1151